IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24/02/2005

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE C. NAGAPPAN

O.S.A.No.299 of 2004 and O.S.A.No. 300 of 2004
and
CMP.Nos.20737 to 20740 OF 2004

In House Productions Pvt. Ltd.,
B-50, Deluxe Building
Off New Link road
Near Monginis
Andhrei (West)
Mumbai 400 058
rep. by its General Manager .. Appellant in both appeals

-Vs-

1. Meediya Plus
No.10, Muthu Pandian Avenue,
Santhome,
Chennai 600 004.
rep. by its Partners
Ms. Girija Swamy
Mr. Chandra Kanth

2. Ms. Sri Priya .. Respondents in both appeals

Appeals filed against the Common Order dated 17.12.2004 passed by the learned single Judge in O.A.Nos.962 and 963 of 2004 under Clause 15 of the Letters Patent and Order 36 Rule 1 of the Original Side Rules.

!For Appellant : Mr.R. Krishnamurthy
Senior Counsel for
Mr.S. Raghunathan

^For Respondents : Mr.R. Krishnaswamy
Senior Counsel for
Mr.C. Ramesh

:COMMON JUDGMENT

P.K. MISRA, J

These Two appeals are directed against the common order of the learned single Judge rejecting the two applications, namely, O.A.Nos.962 and 963 of 2004, filed under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act).

2. Prayer in O.A.No.962 of 2004 was for issuing an order of interim injunction restraining the respondents in any manner entering into any arrangement, agreement or from assigning marketing rights, copy right and all other related rights in respect of the program Vikramadityan or any modification, translation or adaptation thereof and/or giving effect to any such agreement, arrangement or assignment if already entered into with any third party or between the parties, pending arbitration proceedings.

3. Prayer in O.A.No.963 of 2004 was for issuing an order of interim injunction restraining the respondents from producing or continuing to produce, telecasting or continuing to telecast the serial Vikramadityan in Tamil or in any other language or under any other title for telecast over any satellite channel and to reproduce, publish or otherwise exploit the copyright in the said program Vikramadityan through any other technological medium including videos, DVDs, VCDs etc. in respect of the episodes already telecasted and in respect of future episodes either by themselves or with any other third party under any joint production agreement except with the applicant in accordance with the MOU between the applicant and the respondent dated 2.8.20 03 and the Addendum dated 15.7.2004, pending arbitration proceedings.

4. According to the appellant there was a Memorandum of Understanding between the appellant and the two respondents under which Respondent No.1 was to produce a tele-serial. As per clause 6(i) of the said MOU, the applicant had all copyrights and other related rights. It is asserted by the applicant that in violation of the terms indicated in the MOU, the agreement was unilaterally terminated and the applicant was taking steps to refer the dispute to the arbitrator as per the arbitration clause and as the respondents were likely to continue the production by arranging finance from others, interim injunction, substance of which had been already extracted, should be issued. It is further indicated in the application that t he applicant without prejudice to the contentions raised, make payments of defaulted amount if any and the respondent No.1 should continue to produce the serial by obtaining finance from the appellant as per the Memorandum of Understanding.

5. In the counter affidavit the respondents indicated that the applicant had defaulted in making payments as per the agreement, and therefore, such agreement has been terminated in accordance with clause 10(ii). It is further indicated that in accordance with clause 10(B)(3), respondent No.1 had the right to continue the production of the serial and broadcast the same. It is further indicated that as a matter of fact a new agreement had been entered into between Respondent No.1 and another financier

and thereafter, production and telecasting of the serial continued.

6. Learned single Judge came to the conclusion that the question as to whether termination of the agreement was in violation of the clauses of the Memorandum of Understanding is a matter which has to be decided by the arbitrator and such matter should not be decided in the interlocutory proceedings. It was further observed that in case it is found that termination was illegal and contrary to the terms of the agreement, the arbitrator can award adequate compensation to the applicant and as such there would not be any irreparable loss. Learned single Judge further held that the applicant cannot claim that Respondent No.1 must continue to produce by obtaining finance from the applicant as this would amount to specific enforcement of a contract of personal service and the balance of convenience is not in favour of the applicant. Upon these conclusions, both the applications were rejected.

7. Section 9 of the Arbitration and Conciliation Act, 1996 is to the following effect :-

"9. Interim measures, etc. by Court.-- A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court--
(i) for the appointment of a guardian for a minor or a person of unsound mind for the purposes of arbitral proceedings; or
(ii) for an interim measure of protection in respect of any of the following matters, namely:--
(a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;
(b) securing the amount in dispute in the arbitration;
(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;
(d) interim injunction or the appointment of a receiver;
(e) such other interim measure of protection as may appear to the court to be just and convenient, and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

8. This provision makes it clear that a party can invoke the jurisdiction of the competent Civil Court under Section 9 seeking for any adequate interim protection including that of the injunction. Such interim relief can be granted even before the commencement of the proceedings for the arbitration or during pendency of arbitral proceedings or even after conclusion of the arbitral proceedings, provided the award has not been executed.

9. It is obvious that while considering the question of grant of any interim relief in the nature of injunction, underlying principles for grant of injunction as applicable in proceedings under Order 39 Rules 1 and 2 of the Code of Civil Procedure would be applicable. So far as the grant of injunction under Order 39 Rules 1 and 2 is concerned, law is more or less well settled that the grant of injunction is a discretionary relief and while granting such injunction, the court is required to satisfy itself that there is a prima facie case in favour of the party asking for injunction and irreparable injury or damage would be caused if injunction is not granted and balance of convenience lies in favour of the applicant. For considering as to whether there is a prima facie case or not, the applicant is not expected to prove his case to the hilt and the Court is only required to satisfy itself that there is a serious question to be tried and there is probability of the applicant being entitled to the relief asked for. Once prima facie case is found, the court is further required to consider whether any irreparable injury would be caused. Irreparable injury in such sense would mean that there is no other remedy available to the applicant except injunction. Irreparable injury in such context would mean that a material injury which cannot be adequately compensated by way of damages. Apart from these two aspects, the Court is further required to conclude that balance of convenience lies in favour of the applicant and to find out comparative hardship, mischief or inconvenience, which is likely to occur if injunction is with-held and if the Court finds that the comparative hardship, mischief or inconvenience is likely to be greater, if it is to be withheld, the court in its exercise of sound judicial discretion may grant injunction. The aforesaid well settled principle would be equally applicable to the matters relating to grant of injunction as envisaged under Section 9 of the Arbitration and Conciliation Act.

10. Learned Senior Counsel for the appellant has submitted that in the present case the learned single Judge did not at all consider the question of prima facie case and merely opined that termination of the agreement in accordance with the MOU is the matter to be decided by the arbitrator.

11. For the purpose of deciding the aforesaid appeals, we are prepared to come to a conclusion that there is a prima facie case or a fair question to be raised before the arbitrator and in that sense it can be said that there is a prima facie case. However, as already indicated, mere existence of a prima facie case does not entitle the party to seek injunction unless the other two conditions are satisfied. So far as the latter two aspects are concerned, the learned single Judge has referred to the submissions made on both sides and has negatived the contentions raised by the present appellant. Learned single Judge has rightly observed that no irreparable loss would be caused to the appellant as he can be well compensated by the arbitrator if ultimately it is found that termination of the agreement was in any way illegal or contrary to the terms of the agreement.

12. After hearing the learned Senior Counsels for both sides at length and careful consideration of the materials on record, we are not in a position to come to a conclusion that the observation of the

learned single Judge on this aspect is erroneous warranting interference.

13. Similarly the conclusion of the learned single
Judge that balance of convenience was not in favour of the applicant does not appear to be erroneous. Learned single Judge has observed that directing the respondents in continuing the production of the serial by obtaining finance only from the present appellant may amount to specific enforcement of contract of service, prima facie appears to be correct. Moreover, the agreement itself contemplates that the first respondent can continue the production under certain contingencies. The reasonings given by the learned single Judge cannot be said to be erroneous. As already indicated, grant of injunction is a discretionary relief and in the present case, the learned single Judge has referred to the relevant aspects while considering the question of irreparable loss and balance of convenience and therefore, the discretionary order of the learned single Judge in refusing to grant injunction is not required to be interfered in the appeals.

14. For the aforesaid reasons, we do not find any
merit in these appeals, which are accordingly dismissed. No costs. Consequently, the connected C.M.Ps. are closed.

Index : Yes
Internet: Yes

dpk